

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 622 of 1997

in

CIVIL APPLICATION No. 10977 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K. THAKKER

and

MR.JUSTICE S.D. PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHAVDA SHANKARJI BHARTHAJI

Versus

DECEASED CHAVDA RAJUJI BADARJI, THROUGH HIS HEIRS

Appearance:

MR JITENDRA M PATEL for Petitioner

MR RK PATEL for Respondents

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE S.D.PANDIT

Date of decision: 06/08/97

ORAL JUDGEMENT

Admitted. Mr. R.K Patel appears and waives

service of notice of admission on behalf of respondents. In the facts and circumstances of the case, matter is taken up for final hearing today.

2. This appeal is filed against an order passed by the learned Single Judge in Civil Application No. 10977 of 1996 in Special Civil Application No. 2730 of 1984 dated May 5, 1997. That application was filed by the present appellant for a prayer to join respondent Nos. 1/1 to 1/6 as heirs and legal representatives of one Chavda Rajuji Badarji, who was the respondent in Special Civil Application. A prayer was also made to set aside abatement and to condone delay in filing the application. The appellant is the original petitioner. He had filed Special Civil Application No. 2730 of 1984 against Chavda Rajuji Badarji. During pendency of the petition, the respondent died and since no application was made to bring on record heirs and legal representatives of deceased respondent Chavda Rajuji Badarji {original respondent No.1}, the petition stood abated. The above Civil Application was, therefore, filed. The learned Single Judge rejected the application observing that the appellant ought to have taken steps within "reasonable time" to bring on record heirs and legal representatives of the deceased but he failed to do so. There was no explanation for making application after a long delay, hence, Civil Application was dismissed.

3. Mr. R.K Patel, learned counsel fairly stated that the application may be granted and that respondents have no objection. Hence, the following order :-

3.1 This appeal is allowed. The order passed by the learned Single Judge in Civil Application No. 10977 of 1996 passed on May 5, 1997 is set-aside. Civil Application is granted. Respondent Nos. 1/1 to 1/6 are ordered to be brought on record. The learned Single Judge will now decide the main matter i.e., Special Civil Application No. 2730 of 1984 in accordance with law.

3.2 We may clarify that we are not expressing anything on merits of the matter and as and when matter will be taken up for hearing before the learned Single Judge, the same will be decided in accordance with law. No order as to costs.

Prakash*